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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,074	05/24/2001	Stephen Paul Zimmerman	8094M	6704

27752 7590 05/05/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/865,074	Applicant(s) ZIMMERMAN ET AL.	
	Examiner Lien T Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 21-23,25,27,33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willard (4623548).

Willard discloses snack products made from corn and other cereal flours. The snack products are made from a dough comprising 15-80% low water absorption component, 3-40% high water absorption component and a moisture content of 40-50%. The low water absorption component can be partially gelatinized cereal flours such as masa flour and whole corn flour subjected to heat treatment to partially gelatinized the starch. The high water absorption component can be pregelatinized starch. (See columns 2-5)

Willard does not disclose the glass transition temperature of claim 25, the viscosity, water absorption index and percent of gelatinization of the pregelatinized starch, the coefficient of variation, the total volume occupied by solids and the maximum thickness.

The glass transition temperature of the chip is obvious in the Willard product because the snack is made from a dough containing precooked starch-based material and pregelatinized starch. The claimed dough requires 25-40% of a precooked starch-based material and 2.5-4% of a pregelatinized starch; 50% of 50-80% is 25-40% and .5% of 50-80% is 2.5-4%. These ranges fall within the ranges disclosed by Willard. The glass transition temperature is the result of the starch found in the dough; since the Willard dough comprises the same starch, the temperature claimed is obvious in the Willard product. Willard does not disclose the percent of gelatinization of the pregelatinized starch, the viscosity and the water absorption index. However, these

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parameters do not define the claimed product over the Willard product because in the chip, the pregelatinized starch no longer has the viscosity, water absorption index and the percent of gelatinization claimed. The product being claimed is the chip and not the dough. The selection of a specified starch is a different in the processing step and such step does not determine the patentability of the product. Applicant has not shown that the use of the pregelatinized starch having the parameters claimed gives unexpected properties or makes the product different from the Willard product. The dough is fried to form the chip; thus, in the chip, the pregelatinized starch will no longer has the characteristics claimed. As to the thickness and the coefficient of variation of the chip thickness, it would have been obvious to make the snack thicker or thinner depending on the texture desired; for instance, if a crunchier taste is desired, it would have been obvious to make the snack thinner or if a less crunchy taste is desired, it would have been obvious to make the snack thicker.

Claims 24,26,28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willard as applied to claims 21-23,25,27 and 33 above, and further in view of Holm et al.

Willard does not disclose the chip having surface features having the parameters claimed.

Holm et al disclose snack products having a predetermined level of surface bubbling. The snack preferably has a combination of surface features as shown in figures 2-3 (see column 12, lines 1-20). The process can be adjusted to produce products ranging from those having very little bubbling to products which are totally

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pillowed. By adjusting the initial dough moisture, the thickness of the dough sheet and the drying environment, a chip product having any desired bubble size distribution can be created (see col. 11 lines 46-55). The snack has a thickness in the range of about .5mm to about 1.5mm (see col. 6 lines 9-10).

It would have been obvious to one skilled in the art to use the teaching of Holm et al to adjust parameters such as initial dough moisture, thickness of the dough sheet and the drying environment to obtain a product having a bubbling and blistering surface to enhance the textural quality of the product. It would have been obvious to one skilled in the art to vary the parameters as set forth by Holm et al on column 11 lines 46-55 to obtain any distribution of bubbling and the size of the bubbles depending on the appearance and the texture desired. Holm et al disclose products with different sizes of bubbles are preferred. Since both the Holm et al and Willard products are in the field of fabricated snack products, the teaching of Holm et al is equally applicable to the Willard product. Applicant has not shown anything unexpected in the percent of surface features and dimensions claimed. It would also have been obvious to vary thickness depending on the size and distribution of bubbles as taught by Holm et al. If the thickness varies, then the coefficient of variation of the thickness will also vary. The bubble provides interior void and as stated above, it would have been obvious to vary the size of the bubbles which consequently affect the size of the interior void and the total volume occupied by solids. The distribution of the bubbles will also affect the volume occupied by solids and it would have been obvious to vary the distribution of the bubbles depending on the appearance and texture desired.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 3, 2004


LIEN TRAN
PRIMARY EXAMINER
